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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1959~~ 1960

No. ~~733~~ 43

HARRY R. THOMAS, EXECUTOR, PETITIONER,

vs.

VIRGINIA.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF ARLINGTON COUNTY OF THE COMMONWEALTH OF VIRGINIA

PETITION FOR CERTIORARI FILED FEBRUARY 25, 1960
CERTIORARI GRANTED APRIL 4, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959/1960

No. 733 43

HARRY R. THOMAS, EXECUTOR, PETITIONER,

vs.

VIRGINIA.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF ARLINGTON COUNTY OF THE COMMONWEALTH OF VIRGINIA

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., JUNE 2, 1960

[fol. 1] [File endorsement omitted]

IN THE CIRCUIT COURT OF ARLINGTON COUNTY COMMONWEALTH OF VIRGINIA

In Re: Estate of Crandal Mackey
Assessment of Virginia Inheritance Tax.

APPLICATION FOR RELIEF FROM SUCH ASSESSMENT—
Filed November 20, 1958

To: The Honorable Circuit Court of Arlington County, Virginia

Your petitioner, Harry R. Thomas, respectfully states as follows:

1. That he is a citizen of the United States, and a resident of Arlington County, Virginia, residing at 920 North Jefferson Street, in said County.

2. That Crandal Mackey, a citizen of the United States and of the Commonwealth of Virginia, late a resident of and domiciled in Arlington County, Virginia, died therein on March 31, 1957, leaving a last will and testament which was duly admitted to probate by this Court on April 9, 1957.

3. That your petitioner was named therein as Executor of the said will and of the estate of the said Crandal Mackey.

4. That your petitioner duly qualified as such Executor in the office of the Clerk of this Court on April 9, 1957, and has acted and continues to act as such Executor.

5. That your petitioner is aggrieved by an assessment of Virginia Inheritance Taxes made against the said Estate of the said Crandal Mackey and against your petitioner, as Executor thereof, by the State Tax Commissioners of Virginia, in the following respects:

(a) By Assessment No. 4103-58, dated June 27, 1958, and recorded in Page 374, at line 8, of the records of such assessments, the said State Tax Commissioners levied an inheritance tax against said Estate of Crandal Mackey in the total amount of $20,378.26.

[fol. 2] (b) Your petitioner alleges that the said tax of $20,378.26 was based upon a total assessment for Virginia inheritance tax purposes which erroneously included an amount of $263,100.00. Your petitioner relates that the said sum of $263,100.00, consisting of U. S. currency commonly known as paper money was owned by the said Crandal Mackey and was located, at the time of his death, in a Safe Deposit box in his name, in the Second National Bank in Washington, District of Columbia.

(c) Your petitioner further alleges that the said sum of $263,100.00 in money as aforesaid, was tangible personal property and was not located within the State of Virginia; that it was not a proper subject of assessment for inheritance taxes by the State Tax Commissioners of Virginia; that the said State Tax Commission of Virginia was and is without authority in law to impose such an assessment; that the said assessment is in violation of the laws of Virginia and of the Constitution and laws of the United States in that it is lacking in due process of law and denies to your petitioner the equal protection of law, as guaranteed to him by said Constitution; and that the assessment so imposed, and herein complained of, is utterly void and of no effect.

(d) It is further alleged that the total inheritance tax assessed by said Commissioners, amounted to $20,378.26; that the correct amount of such tax, excluding from the assessment the item of $263,100.00 herein complained of, would have been $13,795.33; that your petitioner has paid to the Treasurer of Virginia the said sum of $13,795.33; and that the difference of $6,582.93 between the tax so assessed and the tax so paid, arises exclusively from the inclusion in the total assessment of the said sum of $263,100.00 herein complained of.

[fol. 3] (e) Your petitioner further relates that the taxing authority of the District of Columbia has included the said sum of $263,100.00 in its assessment of inheritance taxes against the estate of the said Crandal Mackey, in the District of Columbia; and the resulting tax has been paid by said Estate to said District.

Wherefore, your petitioner makes application, in accordance with the provisions of Section 58-182 and related statutes, of the Code of Virginia, for the entry by this Honorable Court, of such Order or Orders as may be requisite, exonerating the Estate of the said Crandal Mackey and himself, as Executor thereof, from payment of the sum of $6,582.93, with all interest and penalties thereon, erroneously charged and assessed as inheritance taxes against said Estate, as related in the foregoing application.

Harry R. Thomas, Executor, Estate of Crandal Mackey.

Harry Lee Thomas, and Lawrence W. Douglas, Attorneys for Applicant, 404 Arlington Trust Bldg., Arlington, Virginia.

Notice:

To:

Hon. William J. Hassan, Attorney for the Commonwealth, Arlington County, Virginia.

To:

The Department of Taxation, Commonwealth of Virginia, Richmond, Virginia.

To:

Hon. H. Bruce Green, Clerk of the Circuit Court, Arlington County, Va.

Please take notice that the attached application for relief from an erroneous assessment of Virginia inheritance taxes has been filed in the office of the Clerk of the Circuit Court [fol. 4] of Arlington County, Virginia, and that on Monday, December 29, 1958, at 10 o'clock A.M., or as soon thereafter as he may be heard, the undersigned will present said application to the Circuit Court of the said County of Arlington, Virginia, in the Court Room thereof, in the County Court House in said County.

Given under my hand this 20 day of November, 1958.

Harry R. Thomas, Executor, Estate of Crandal Mackey.

Service and Certificate of Service (omitted in printing).

[fol. 6] [File endorsement omitted]

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

HARRY R. THOMAS, Executor of the Estate of Crandal Mackey, Applicant,

v.

COMMONWEALTH OF VIRGINIA, Respondent.

ANSWER OF THE COMMONWEALTH OF VIRGINIA—Filed December 10, 1958

The Answer of the Commonwealth of Virginia to an application for correction of the erroneous assessment of inheritance taxes filed by Harry R. Thomas, Executor of the Estate of Crandal Mackey.

The Commonwealth, reserving to herself the benefit of all just exceptions to the said application, for answer thereto, or to so much thereof as she is advised that it is material she should answer, answers and avers [redacted]

1. Respondent admits as being true the allegations in paragraphs numbered 1 through 4 of the application.

2. Respondent admits as being true the allegations in paragraph numbered 5(a).

3. Respondent avers in answer to the allegations in paragraph numbered 5(b) that she has correctly included the sum of $263,100.00, consisting of U.S. currency, commonly known as paper money owned by Crandal Mackey and located in a safe deposit box in his name in the Second National Bank in Washington, D. C., in the total assessment for Virginia inheritance tax purposes.

[fol. 7] 4. Respondent avers in answer to the allegations in paragraph numbered 5(c) that the said sum of $263,100.00 in currency aforesaid, was intangible personal property, the situs of which for assessment of Virginia in-

heritance taxes was at the place of residence of the decedent owner, Crandal Mackey, at the time of his death.

5. Respondent avers in answer to the allegations contained in paragraph numbered 5(d) that the total inheritance tax assessed by the State Tax Commissioner of Virginia amounted to $20,378.26; that this is the correct amount of such tax; that the applicant has paid to the Treasurer of Virginia the sum of $13,795.33; that the applicant has not paid the amount of $6,582.93 which represents the proper amount of inheritance tax upon the sum of $263,100.00 in currency owned by the decedent Crandal Mackey at the time of his death.

6. Respondent neither denies nor admits the allegations made in paragraph number 5(e) of the application, and demands strict proof thereof.

And now, having fully answered the applicant's application for correction of erroneous assessment of inheritance taxes, the Commonwealth prays for this Honorable Court to find that the assessment made by the Commonwealth is correct and that the applicant be required to pay the remaining inheritance taxes due the Commonwealth of Virginia in the amount of $6,582.73, plus interest from June 30, 1958, until paid, as prescribed by § 58-177 of the Code of Virginia.

Commonwealth of Virginia, By: C. H. Morrissett,
State Tax Commissioner of Virginia.

C. F. Hicks, Assistant Attorney General of Virginia, Supreme Court Building, Richmond, Virginia, Counsel for the Commonwealth.

[fol. 9]

IN THE CIRCUIT COURT OF ARLINGTON COUNTY, VIRGINIA

In Re:

Estate of Crandal Mackey

At Law No. 6967

MEMORANDUM—June 3, 1959

From: William D. Medley, Judge

To: Lawrence Douglas, Counsel for Petitioner
Harry Lee Thomas, Counsel for Petitioner
C. F. Hicks, Assistant Attorney General, Counsel for Commonwealth of Virginia
William J. Hassan, Commonwealth Attorney for Arlington County

This Case came on to be heard upon the application for relief from assessment of Virginia Inheritance Tax, answer of the Commonwealth of Virginia, argument of counsel and authorities cited.

The Sole Issue presented to the Court for determination was whether certain personal property, hereinafter described, was tangible or intangible personal property.

Upon Consideration Whereof it is the opinion of the Court that the sum of $263,100.00, consisting of United States Currency commonly known as paper money, owned by Crandall Mackey and located, at the time of his death, in a safe deposit box in his name, in the Second National Bank in Washington, District of Columbia, was intangible personal property and a proper subject of assessment for inheritance tax by the State Tax Commissioner of Virginia.

An Order should be prepared pursuant to this memorandum and after endorsement by counsel of record, presented for entry.

June 3, 1959.

William D. Medley, Judge.

[fol. 10]

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

At Law No. 6967

HARRY R. THOMAS, Executor of the Estate of Crandal Mackey, Applicant,

v.

COMMONWEALTH OF VIRGINIA, Respondent.

JUDGMENT—June 29, 1959

This Case came on to be heard, on March 23, 1959, upon the application for relief from assessment of Virginia Inheritance Tax, filed pursuant to the provisions of § 58-182 *et seq.*, of the Code of Virginia, the answer of the Commonwealth of Virginia, the testimony of witnesses and the arguments of counsel for the Applicant and of the Assistant Attorney General for the Commonwealth, and

Upon Consideration Whereof the Court being of the opinion that the sum of $263,100.00, consisting of United States Currency, commonly known as paper money, owned by Crandal Mackey and located, at the time of his death, in a safe deposit box in his name, in the Second National Bank in Washington, District of Columbia, was intangible personal property and a proper subject of assessment for inheritance tax by the State Tax Commissioner of Virginia, it is

Ordered that the application for relief be, and the same hereby is, denied, and it is further

[fol. 11] Ordered that Harry R. Thomas, Executor of the Estate of Crandal Mackey shall pay, out of the assets of said Estate now in his hands, to the Treasurer of Virginia the sum of $6,582.93, balance of inheritance tax due the Commonwealth of Virginia, with interest thereon at the rate of one per centum per month from June 30, 1958, until paid; and it is further

Ordered that the respondent Commonwealth of Virginia recover of the Applicant its proper costs in this behalf expended.

Entered this 29th day of June, 1959.

William D. Medley, Judge.

We ask for this:

John W. Knowles, Assistant Attorney General, William J. Hassan, Commonwealth's Attorney for Arlington County, Of Counsel for the Commonwealth of Virginia.

Seen and Objected to:

Lawrence Douglas, Harry Lee Thomas, Counsel for Applicant.

[fol. 12] [File endorsement omitted]

IN THE CIRCUIT COURT OF ARLINGTON COUNTY, VIRGINIA

[Title omitted]

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR—Filed July 15, 1959

To the Clerk of the Circuit Court of Arlington County, Virginia:

The undersigned Counsel for Harry R. Thomas, Executor of the Estate of Crandal Mackey, applicant or petitioner in the above entitled case in the Circuit Court of Arlington County, Virginia, hereby give notice of appeal from a final order entered in said case on the 29th day of June, 1959, and set forth the following assignments of error:

1. The Court erred in denying the application of petitioner in the above case.

2. The Court erred in finding and ordering that the sum of $263,100, consisting of United States currency, commonly known as paper money, owned by the late Crandal Mackey and located at the time of his death, in a safe deposit box in his name, in a bank in Washington, D. C. was intangible

personal property and a proper subject of assessment for inheritance tax by the State Tax Commissioner of Virginia and in finding that the said property was not tangible personal property, exempt from such assessment as contended by petitioner.

Lawrence W. Douglas, Harry Lee Thomas, Counsel for Harry R. Thomas, Executor of the Estate of Crandal Mackey, Petitioner.

Certificate of Service (omitted in printing).

[fol. 16]

IN THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA

ORDER REFUSING WRIT OF ERROR—November 27, 1959

The petition of Harry R. Thomas, Executor of the Estate of Crandal Mackey, for a writ of error to a final order entered by the Circuit Court of Arlington County on the 29th day of June, 1959, in a certain proceeding then therein depending, entitled, In Re: Estate of Crandal Mackey—Assessment of Virginia Inheritance Tax, having been maturely considered and a transcript of the record of the order aforesaid seen and inspected, the court being of opinion that the said order is plainly right, doth reject said petition, and refuse said writ of error, the effect of which is to affirm the order of the said circuit court.

[fol. 17] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 18]

SUPREME COURT OF THE UNITED STATES

No. 733, October Term, 1959

HARRY R. THOMAS, Executor, Petitioner,

v.

VIRGINIA.

ORDER ALLOWING CERTIORARI—April 4, 1960

The petition herein for a writ of certiorari to the Circuit Court of Arlington County of the Commonwealth of Virginia is granted and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office Supreme Court, U.S.
FILED
FEB 25 1960
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 43

HARRY R. THOMAS, Executor of the Estate of Crandal Mackey, deceased, *Petitioner*

v.

COMMONWEALTH OF VIRGINIA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF ARLINGTON COUNTY, VIRGINIA

CORNELIUS H. DOHERTY
1019 Vermont Ave., N. W.
Washington, D. C.
Attorney for Petitioner

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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CASES CITED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No.

HARRY R. THOMAS, Executor of the Estate of Crandal Mackey, deceased, *Petitioner*

v.

COMMONWEALTH OF VIRGINIA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF ARLINGTON COUNTY, VIRGINIA

The petition of Harry R. Thomas, Executor of the Estate of Crandal Mackey, deceased, for a writ of certiorari to the Circuit Court of Arlington County, Virginia, from a final judgment entered on the 27th day of November, 1959, against your petitioner in the sum of Sixty-Five Hundred Eighty-Two Dollars and Ninety-Three Cents ($6582.93), with interest at one per centum per month from June 30, 1958, until paid, being the balance due the Commonwealth of Virginia for inheritance tax on the Estate of Crandal Mackey, respectfully shows:

The memorandum opinion of the trial judge has not been officially reported but a copy is appended to this petition.

BASIS OF THE COURT'S JURISDICTION

The jurisdiction of this Court is based on Title 28, U. S. C. A., Section 1257 (3).

The judgment of the Circuit Court of Arlington County, Virginia, is in conflict with the decision of this Court in *Blodgett* v. *Silberman*, 277 U. S. 1, 48 S. Ct. Re. 410.

This petition raises the question as to whether the action of the Circuit Court of Arlington County, Virginia, in deciding that Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, in cash, in a safe deposit box in the name of the decedent in a bank in the District of Columbia, on which inheritance tax was paid to the District of Columbia, was intangible personal property and a proper subject of assessment for inheritance tax by the State Tax Commission of Virginia, was a taking of property without due process of law and a violation of petitioner's rights under the Fourteenth Amendment to the Constitution of the United States.

QUESTIONS PRESENTED

Was the Circuit Court of Arlington County, Virginia, in error in holding that the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, in cash, in a safe deposit box in the District of Columbia, in the name of the decedent at the time of his death, was intangible personal property and a proper subject of assessment for inheritance tax pur-

poses by the State Tax Commission of Virginia, the domicile of the decedent?

Was the action of the State Taxing authority of the Commonwealth of Virginia, in assessing the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, in cash, in the District of Columbia as intangible personal property and subject to the payment of an inheritance tax in Virginia, supplemented by the judgment of the Circuit Court of Arlington County, Virginia, a taking of property without due process of law in violation of petitioner's rights under the Fourteenth Amendment?

STATEMENT OF CASE

Crandal Mackey, a member of the bar of this Court, of Virginia, and the District of Columbia, where he maintained his office until his last illness, died March 31, 1957, domiciled in Arlington County, State of Virginia, and letters testamentary were granted to Harry R. Thomas, as the Executor named in his will, by the Circuit Court of Arlington County, Virginia.

Ancillary letters were also granted to Harry R. Thomas in the District of Columbia.

Among the assets of the estate was the sum of Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars in United States currency located in a safe deposit box in his name in the Second National Bank in Washington, D. C.

The taxing authority of the District of Columbia concluded that this cash was a tangible asset of the decedent's estate and included it in its assessment of inheritance tax due the District of Columbia, and your petitioner paid this tax.

The State Tax Commission for Virginia declared that the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars was an intangible asset of the estate and that it should be assessed as a part of the estate for inheritance tax purposes and assessed the tax at Twenty Thousand Three Hundred Seventy-Eight Dollars and Twenty-Six Cents ($20,378.26). Your petitioner paid the sum of Thirteen Thousand Seven Hundred Ninety-Five Dollars and Thirty-Three Cents ($13,795.33), the amount due excluding the tax on the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, leaving a balance of of Sixty-Five Hundred Eight-Two Dollars and Ninety-Three Cents ($6582.93).

An application for relief from such assessment, under the provisions of Title 58, Section 182 of the 1950 Code of Virginia, was filed in the Circuit Court of Arlington County, Virginia. It contained, among other things, in paragraph 5 (c), the statement that the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars was tangible personal property not located within the State of Virginia and that it was not a proper subject of assessment for inheritance taxes by the State Tax Commission of Virginia, and that such assessment is in violation of the laws of the United States in that it is lacking in due process of law and denies to your petitioner the equal protection of law guaranteed to him by the Constitution. Appendix 2a.

The matter was argued on bill and answer and your petitioner contended that on the basis of the decision of this Court in *Blodgett* v. *Silberman*, supra, that the cash in the District of Columbia was tangible personal property assessable in the District of Columbia and that any attempt by the taxing authority of the Com-

monwealth of Virginia to levy a tax on this property would violate the due process clause of the Fourteenth Amendment.

On June 3, 1959, a memorandum was filed by William D. Medley, Judge, holding that the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, in currency in the safe deposit box in the Second National Bank in the District of Columbia at decedent's death, was intangible personal property and a proper subject of assessment for inheritance tax by the State Tax Commission of Virginia, and a judgment entered thereon against your petitioner in the sum of Sixty-Five Hundred Eighty-Two Dollars and Ninety-Three Cents ($6582.93), with interest at one per centum per month from June 30, 1958, until paid. Appendix 7a.

A petition for the allowance of an appeal was timely filed in the Supreme Court of Appeals of Virginia at Richmond, in which it was asserted that any attempt to levy such a tax violated the due process clause of the Fourteenth Amendment.

The petition for the allowance of an appeal to the Circuit Court of Arlington County, Virginia, was denied on November 27, 1959. Appendix 10a.

ARGUMENT

The Decision in This Case, in Holding That the Cash Was Intangible Personal Property, Is in Direct Conflict With a Decision of This Court

It was necessary that your petitioner file an inheritance tax return in the District of Columbia covering real estate and tangible personal property having its situs in the District of Columbia. The taxing authority of the District of Columbia concluded that the

Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, in cash, in a safe deposit box in a bank in the District of Columbia at decedent's death was tangible personal property and as such was subject to its assessment for inheritance tax purposes.

The District based its decision that it was tangible personal property upon the statement contained in the opinion of this Court inthe case of *Blodgett* v. *Silberman*, supra, at page 18 of the official reports, which is as follows:

> "There was a small amount of cash, $287.48, in bank notes and goin in a safe deposit box in New York which the Supreme Court of Errors held not taxable in Connecticut. As to this, the contention on behalf of Connecticut is that it should be treated as attached to the person of the owner and subject to a transfer tax at the domicil. It is argued that it was not like coin or treasure in bulk, but like loose change, so to speak. To money of this amount usually and easily carried on the person, it is said that the doctrine of mobilia sequuntur personam has peculiar application in the historical derivation of the maxim. But we think that money, so definitely fixed and separated in its actual situs from the person of the owner as this was, is tangible property and can not be distinguished from the paintings and furniture held in the Frick case to be taxable only in the jurisdiction where they were."

Your petitioner, in reliance upon this opinion, paid the tax so assessed in the District of Columbia.

Your petitioner further, on the basis of the opinion of the Court in the *Blodgett* case, opposed the imposition of a tax by the Tax Commission of the State of Virginia on the cash in the District of Columbia but the tax was assessed.

The Commonwealth, in its answer to petitioner's application for relief which was filed in the Circuit Court of Arlington County, stated that it had correctly included the sum of Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, consisting of United States currency located in a safe deposit box in the Second National Bank of Washington, D. C., in the total assessment for Virginia inheritance tax purposes. It further states that it was intangible personal property, the situs of which for assessment of Virginia inheritance taxes was at the place of residence of the decedent owner at the time of his death. Appendix 6a.

It is contended that your petitioner property relied upon the decision of this Court in refusing to pay this tax and that the Circuit Court of Arlington County was in error in entering a judgment for the amount of the tax.

The Assessment of an Inheritance Tax by the State of Virginia, Supported by the Judgment of Its Court, on the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, in Cash, in the District of Columbia, Was a Taking of Property Without Process of Law and in Violation of Petitioner's rights Under the Fourteenth Amendment

Your petitioner, in every way possible, raised the question that the assessment by Virginia of an inheritance tax on the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars was a taking of property without due process of law. The Circuit Court held that it was intangible personal property and properly taxable in Virginia. The Supreme Court of Appeals of Virginia denied an appeal with the statement that the order was plainly right. Appendix 10a.

If the decision of the Circuit Court is plainly right then the decision of this Court in *Blodgett* v. *Silberman*, supra, in stating that such cash was tangible personal property, and taxable at its situs, is plainly wrong.

In the case of *Frick, et al.* v. *Pennsylvania*, 268 U. S. 473, 45 S. Ct. Re. 603, is the following, at page 488 of the official reports:

> "The plaintiffs in error are the executors and an interested legatee. They contended in the state court, and contend here, that in so far as the Pennsylvania statute attempts to tax the transfer of tangible personal property having an actual situs in States other than Pennsylvania it transcends the power of that State, and thereby contravenes the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.
>
> "The precise question has not been presented to this Court before, but there are many decisions dealing with cognate questions which point the way to its solution. These decisions show, first, that the exaction by a State of a tax which it is without power to impose is a taking of property without due process of law in violation of the Fourteenth Amendment; secondly, that while a State may so shape its tax laws as to reach every object which is under its jurisdiction it cannot give them any extra-territorial operation; and, thirdly, that as respects tangible personal property having an actual situs in a particular State, the power to subject it to state taxation rests exclusively in that State, regardless of the domicil of the owner."

Again, at page 491, this Court said:

> "Other decisions show that the power to regulate the transmission, administration, and distribution of tangible personal property on the death of the owner rests with the State of its situs, and that the laws of other States have no bearing save as that State expressly or tacitly adopts them—their bearing then being attributable to such adoption and not to any force of their own."

Finally, at page 496, this Court said:

> "For the reasons which have been stated it must be held that the Pennsylvania statute, in so far as it attempts to tax the transfer of tangible personalty having an actual situs in other States, contravenes the due process of law clause of the Fourteenth Amendment and is invalid."

Your petitioner, in good faith, has paid the tax due the District of Columbia, the situs of the cash, upon the basis of the decision of this Court in the *Blodgett* case and it is not necessary to cite further decisions of this Court to support the theory that the assessment of the inheritance tax by the Virginia taxing authority and the judgment of the Circuit Court of Arlington County in the sum of Sixty-Five Hundred Eighty-Two Dollars and Ninety-Three Cents ($6582.93), with interest at one per centum per month from June 30, 1958, until paid, upon the basis that the cash was intangible personal property and subject to the tax in Virginia, was the taking of property without due process of law and in violation of petitioner's rights under the Fourteenth Amendment.

Wherefore, it is respectfully submitted that this petitioner for a writ of certiorari to review the judgment of the Circuit Court of Arlington County, Virginia, should be granted.

CORNELIUS H. DOHERTY
1010 Vermont Ave., N. W.
Washington, D. C.

LAWRENCE W. DOUGLAS
404 Arlington Trust
Building
Arlington, Virginia

HARRY LEE THOMAS
Court House Square
Arlington, Virginia

Attorneys for Petitioner

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

In Re: Estate of Crandal Mackey
Assessment of Virginia Inheritance Tax.

Application for Relief From Such Assessment

To: The Honorable Circuit Court of Arlington County,
Your petitioner, Harry R. Thomas, respectfully states as follows:

1. That he is a citizen of the United States, and a resident of Arlington County, Virginia, residing at 920 North Jefferson Street, in said County.

2. That Crandal Mackey, a citizen of the United States and of the Commonwealth of Virginia, late a resident of and domiciled in Arlington County, Virginia, died therein on March 31, 1957, leaving a last will and testament which was duly admitted to probate by this Court on April 9, 1957.

3. That your petitioner was named therein as Executor of the said will and of the estate of the said Crandal Mackey.

4. That your petitioner duly qualified as such Executor in the office of the Clerk of this Court on April 9, 1957, and has acted and continues to act as such Executor.

5. That your petitioner is aggrieved by an assessment of Virginia Inheritance Taxes made against the said Estate of the said Crandal Mackey and against your petitioner, as Executor thereof, by the State Tax Commissioners of Virginia, in the following respects:

(a) By Assessment No. 4103-58, dated June 27 1958, and recorded in Page 374, at line 8, of the records of assessments, the said State Tax Commissioners levied an inheritance tax against said Estate of Crandal Mackey in the total amount of $20,378.26.

(b) Your petitioner alleges that the said tax of $20,378.26 was based upon a total assessment for Virginia inheritance tax purposes which erroneously included an amount of $263,100.00. Your petitioner relates that the said sum of $263,100.00, consisting of U. S. currency commonly known as paper money was owned by the said Crandal Mackey and was located at the time of his death, in a Safe Deposit box in his name, in the Second National Bank in Washington, District of Columbia.

(c) Your petitioner further alleges that the said sum of $263,100.00 in money as aforesaid, was tangible personal property and was not located within the State of Virginia; that it was not a proper subject of assessment for inheritance taxes by the State Tax Commissioners of Virginia; that the said State Tax Commission of Virginia was and is without authority in law to impose such an assessment; that the said assessment is in violation of the laws of Virginia and of the Constitution and laws of the United States in that it is lacking in due process of law and denies to your petitioner the equal protection of law, as guaranteed to him by said Constitution; and that the assessment so imposed, and herein complained of, is utterly void and of no effect.

(d) It is further alleged that the total inheritance tax assessed by said Commissioners, amounted to $20,378.26; that the correct amount of such tax, excluding from the assessment the item of $263,100.00 herein complained of, would have been $13,795.33; that your petitioner has paid to the Treasurer of Virginia the said sum of $13,795.33; and that the difference of $6,582.93 between the tax so assessed and the tax so paid, arises exclusively from the inclusion in the total assessment of the said sum of $263,100.00 herein complained of.

(e) Your petitioner further relates that the taxing authority of the District of Columbia has included the said sum of $263,100.00 in its assessment of inheritance taxes

against the estate of the said Crandal Mackey, in the District of Columbia; and the resulting tax has been paid by said District.

WHEREFORE, your petitioner makes application, in accordance with the provisions of Section 58-182 and related statutes, of the Code of Virginia, for the entry by this Honorable Court, of such Order or Orders as may be requisite, exonerating the Estate of the said Crandal Mackey and himself, as Executor thereof, from payment of the sum of $6,582.93, with all interest and penalties thereon, erroneously charged and assessed as inheritance taxes against said Estate, as related in the foregoing application.

HARRY R. THOMAS
Harry R. Thomas, *Executor*
Estate of Crandal Mackey

HARRY LEE THOMAS
Harry Lee Thomas, and
LAWRENCE W. DOUGLAS
Lawrence W. Douglas
Attorneys for Applicant
404 Arlington Trust Bldg.
Arlington, Virginia

NOTICE

To: HON. WILLIAM J. HASSAN
Attorney for the Commonwealth
Arlington County, Virginia

To: THE DEPARTMENT OF TAXATION
Commonwealth of Virginia
Richmond, Virginia

To: HON. H. BRUCE GREEN
Clerk of the Circuit Court
Arlington County, Virginia

Please take notice that the attached application for relief from an erroneous assessment of Virginia inheritance

taxes has been filed in the office of the Clerk of the Circuit Court of Arlington County, Virginia, and that on Monday, December 29, 1958, at 10 o'clock A.M., or as soon thereafter as he may be heard, the undersigned will present said application to the Circuit Court of the said County of Arlington, Virginia, in the Court Room thereof, in the County Court House in said County.

GIVEN under my hand this 20 day of November, 1958.

HARRY R. THOMAS
Harry R. Thomas, *Executor*
Estate of Crandal Mackey.

I hereby certify that on the 20 day of November, 1958, I mailed to the Department of Taxation, Commonwealth of Virginia, Richmond Virginia, by U.S. Registered Mail, postage prepaid, a copy of the foregoing and attached application and notice.

LAWRENCE W. DOUGLAS
Lawrence W. Douglas
of Counsel for applicant.

Legal and timely service of the
foregoing and attached certification
is hereby accepted this Nov. 20th, 1958.

WILLIAM J. HASSAN
Commonwealth Attorney

H. BRUCE GREEN
County Clerk of
Arlington County, Va.

Filed Dec. 10, 1958

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

Law 6967

Application for
Correction of Erroneous Assessment

HARRY R. THOMAS, Executor of the Estate of
CRANDAL MACKEY, *Applicant*,

v.

COMMONWEALTH OF VIRGINIA, *Respondent*.

Answer of the Commonwealth of Virginia

The Answer of the Commonwealth of Virginia to an application for correction of the erroneous assessment of inheritance taxes filed by Harry R. Thomas, Executor of the Estate of Crandal Mackey.

The Commonwealth, reserving to herself the benefit of all just exceptions to the said application, for answer thereto, or to so much thereof as she is advised that it is material she should answer, answers and avers:

1. Respondent admits as being true the allegations in paragraphs numbered 1 through 4 of the application.

2. Respondent admits as being true the allegations in paragraph numbered 5(a).

3. Respondent avers in answer to the allegations in paragraph numbered 5(b) that she has correctly included the sum of $263,100.00, consisting of U.S. currency, commonly known as paper money owned by Crandal Mackey and located in a safe deposit box in his name in the Second National Bank in Washington, D. C., in the total assessment for Virginia inheritance tax purposes.

4. Respondent avers in answer to the allegations in paragraph numbered 5(c) that the said sum of $263,100.00 in currency aforesaid, was intangible personal property,

the situs of which for assessment of Virginia inheritance taxes was at the place of residence of the decedent owner, Crandal Mackey, at the time of his death.

5. Respondent avers in answer to the allegations contained in paragraph numbered 5(d) that the total inheritance tax assessed by the State Tax Commissioner of Virginia amounted to $20,378.26; that this is the correct amount of such tax; that the applicant has paid to the Treasurer of Virginia the sum of $13,795.33; that the applicant has not paid the amount of $6,582.93 which represents the proper amount of inheritance tax upon the sum of $263,100.00 in currency owned by the decedent Crandal Mackey at the time of his death.

6. Respondent neither denies nor admits the allegations made in paragraph number 5(e) of the application, and demands strict proof thereof.

And now, having fully answered the applicant's application for correction of erroneous assessment of inheritance taxes, the Commonwealth prays for this Honorable Court to find that the assessment made by the Commonwealth is correct and that the applicant be required to pay the remaining inheritance taxes due the Commonwealth of Virginia in the amount of $6,582.73, plus interest from June 30, 1958, until paid, as prescribed by § 58-177 of the Code of Virginia.

COMMONWEALTH OF VIRGINIA

By: C. H. MORRISSETT
C. H. Morrissett
State Tax Commmissioner of Virginia

C. F. HICKS
C. F. Hicks
Assistant Attorney General of Virginia
Supreme Court Building
Richmond, Virginia
Counsel for the Commonwealth

IN RE: ESTATE of CRANDAL MACKEY At Law No. 6967

THE 23rd day of March 1959 came Harry Lee Thomas, Esquire, and Lawrence W. Douglas, Esquire, counsel for the Petitioner herein and John Wingo Knowles, Esquire, Assistant Attorney General, counsel for the Commonwealth of Virginia.

WHEREUPON the Court heard argument of counsel for both sides on the Application and answer filed herein and upon consideration whereof took the case under advisement. Entered this 23rd day of March, 1959.

WILLIAM D. MEDLEY
Judge

IN THE CIRCUIT COURT OF ARLINGTON COUNTY, VIRGINIA

IN RE: ESTATE of CRANDAL MACKEY At law No. 6967

Memorandum

FROM: WILLIAM D. MEDLEY, *Judge*

TO: Lawrence Douglas, Counsel for Petitioner
Harry Lee Thomas, Counsel for Petitioner
C. F. Hicks, Assistant Attorney General, Counsel for Commonwealth of Virginia
William J. Hassan, Commonwealth Attorney for Arlington County

THIS CASE came on to be heard upon the application for relief from assessment of Virginia Inheritance Tax, answer of the Commonwealth of Virginia, argument of counsel and authorities cited.

THE SOLE ISSUE presented to the Court for determination was whether certain personal property, hereinafter described, was tangible or intangible personal property.

UPON CONSIDERATION WHEREOF it is the opinion of the Court that the sum of $263,100.00, consisting of United

States Currency commonly known as paper money, owned by Crandall Mackey and located, at the time of his death, in a safe deposit box in his name, in the Second National Bank in Washington, District of Columbia, was intangible personal property and a proper subject of assessment for inheritance tax by the State Tax Commissioner of Virginia.

An Order should be prepared pursuant to this memorandum and, after endorsement by counsel of record, presented for entry.

June 3, 1959.

William D. Medley
Judge

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

At Law No. 6967

Harry R. Thomas, Executor of the Estate of Crandal Mackey, *Applicant*,

v.

Commonwealth of Virginia, *Respondent*.

Order

This Case came on to be heard on March 23, 1959, upon the application for relief from assessment of Virginia Inheritance Tax, filed pursuant to the provisions of § 58-182 *et seq.*, of the Code of Virginia, the answer of the Commonwealth of Virginia, the testimony of witnesses and the arguments of counsel for the Applicant and of the Assistant Attorney General for the Commonwealth, and

Upon Consideration Whereof the Court being of the opinion that the sum of $263,100.00, consisting of United States Currency, commonly known as paper money, owned by Crandal Mackey and located, at the time of his death,

in a safe deposit box in his name, in the Second National Bank in Washington, District of Columbia, was intangible personal property and a proper subject of assessment for inheritance tax by the State Tax Commissioner of Virginia, it is

ORDERED that the application for relief be, and the same hereby is, denied, and it is further

ORDERED that Harry R. Thomas, Executor of the Estate of Crandal Mackey shall pay, out of the assets of said Estate now in his hands, to the Treasurer of Virginia the sum of $6,582.93, balance of inheritance tax due the Commonwealth of Virginia, with interest thereon at the rate of one per centum per month from June 30, 1958, until paid; and it is further

ORDERED that the respondent Commonwealth of Virginia recover of the Applicant its proper costs in this behalf expended.

ENTERED this 29th day of June, 1959.

WILLIAM D. MEDLEY
Judge

We ask for this:

JOHN W. KNOWLES
Assistant Attorney General

WILLIAM J. HASSAN
Commonwealth's Attorney for
for Arlington County
Of Counsel for the Commonwealth
of Virginia

Seen and Objected to:

LAWRENCE DOUGLAS
Lawrence Douglas
HARRY LEE THOMAS
Harry Lee Thomas
Counsel for Applicant

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 27th day of November, 1959.

The petition of Harry R. Thomas, Executor of the Estate of Crandal Mackey, for a writ of error to a final order entered by the Circuit Court of Arlington County on the 29th day of June, 1959, in a certain proceeding then therein depending, entitled, In Re: Estate of Crandal Mackey—Assessment of Virginia Inheritance Tax, having been maturely considered and a transcript of the record of the order aforesaid seen and inspected, the court being of opinion that the said order is plainly right, doth reject said petition, and refuse said writ of error, the effect of which is to affirm the order of the said circuit court.

A copy Teste:

H. G. TURNER
Clerk

FILE COPY

In the

Supreme Court of the United States

October Term, 1959

No. 43

HARRY R. THOMAS, EXECUTOR OF THE ESTATE OF CRANDAL MACKEY, DECEASED,
Petitioner

v.

COMMONWEALTH OF VIRGINIA,
Respondent

On Petition for a Writ of Certiorari to the Circuit Court of Arlington County, Virginia

BRIEF FOR THE RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

A. S. HARRISON, JR.
Attorney General

JOHN W. KNOWLES
Assistant Attorney General

Supreme Court – State Library Building
Richmond 19, Virginia

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In the

Supreme Court of the United States

October Term, 1959

No. 733

HARRY R. THOMAS, EXECUTOR OF THE ESTATE OF CRANDAL MACKEY, DECEASED,
Petitioner

v.

COMMONWEALTH OF VIRGINIA,
Respondent

On Petition for a Writ of Certiorari to the Circuit Court of Arlington County, Virginia

BRIEF FOR THE RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

PRELIMINARY STATEMENT

On February 25, 1960, Petitioner filed in this Court his petition and appendix, in the requisite number of copies, together with a certified copy of the record from the Circuit Court of Arlington County, Virginia. Two copies of the petition and appendix were received in the mail by counsel for Respondent on February 26, 1960.

The "Statement of the Case" set out on pages 3, 4 and 5 of the petition fairly presents the prior proceedings and the facts of the case from its inception through the denial of a writ of error by the Supreme Court of Appeals of Virginia on November 27, 1959, hence repetition here is unnecessary.

QUESTION PRESENTED

Was the Two Hundred Sixty-three Thousand One Hundred ($263,100.00) Dollars of United States currency, commonly known as paper money, located in a safe deposit box in the name of Crandal Mackey, the testator, in the Second National Bank in the District of Columbia, intangible personal property, with the result that the assessment and collection by the Commonwealth of Virginia of an inheritance or succession tax on this asset of the estate of a domiciliary of Virginia does not constitute a taking of property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States?

ARGUMENT

The United States Currency in Question Was Intangible Personal Property and Subject to the Virginia Inheritance Tax

The principal statute of the Commonwealth of Virginia pertinent to the instant case is Section 58-152 of the Code of Virginia, 1950, which reads, in part:

> "58-152. State inheritance taxes as hereinafter prescribed, are hereby levied upon the shares of the respective beneficiaries in all property within the jurisdiction of this Commonwealth, real, personal and mixed, and any interest therein, which shall pass:
>
> "(1) By will or by the laws regulating descents and distributions; * * *."

As interpreted by the Supreme Court of Appeals of Virginia this Code section

> "* * * lays the inheritance tax on the shares of beneficiaries in property 'within the jurisdiction of this Commonwealth.' Property may be in this jurisdiction either actually or constructively. It is here actually when it is physically present. It is here constructively

when it is intangible property which has not acquired a tax situs elsewhere by reason of its use and its owner is domiciled here." *Commonwealth* v. *Morris*, 196 Va. 868, 877, 86 S. E. (2d) 135.

The Code of Virginia further prescribes that all money is, for tax purposes, "intangible personal property." Section 58-408 of the Code reads in part:

> "§ 58-408. (1) All money, except money which is otherwise taxed, on deposit with any bank or other corporation or firm or person doing a banking business,
>
> * * *
>
> "(4) Money in the possession or under the control of the owner, whether such money be actually in or out of this State and belonging to a resident of this State,
>
> * * *
>
> "Shall be deemed to be intangible personal property."

It is the contention of Respondent that currency (paper money), such as that found in the safe deposit box in the Second National Bank in the District of Columbia, is in essence an obligation or promise to pay a sum certain upon presentation to the issuer—the United States of America. It is evidence of a debt owed by the United States to the bearer of the note, certificate or bill. At the present, paper currency is issued in the form of (1) Gold Certificates, issued only to Federal Reserve banks against credits with the Treasurer of the United States and not appearing in circulation; (2) Silver Certificates, issued by the Treasurer against any standard silver dollars, silver, or silver bullion held in the Treasury against which silver certificates are not already outstanding; (3) United States Notes and (4) Federal Reserve Notes. The Silver Certificates and Federal Reserve Notes constitute the principal types of paper currency in circulation.

Examination of the face of a Silver Certificate, issued in denominations of one dollar, five dollars and ten dollars, discloses that the certificate recites: "THIS CERTIFIES THAT THERE IS ON DEPOSIT IN THE TREASURY OF THE UNITED STAES OF AMERICA ..... DOLLARS IN SILVER PAYABLE TO THE BEARER ON DEMAND." Similarly, a Federal Reserve Note recites: "THE UNITED STATES OF AMERICA WILL PAY TO THE BEARER ON DEMAND ..... DOLLARS." This latter note further recites on its face: "THIS NOTE IS LEGAL TENDER FOR ALL DEBTS, PUBLIC AND PRIVATE, AND IS REDEEMABLE IN LAWFUL MONEY AT THE UNITED STATES TREASURY, OR AT ANY FEDERAL RESERVE BANK."

It follows that the Two Hundred Sixty-three Thousand One Hundred ($263,100.00) Dollars in United States currency "commonly known as paper money" (Petition, App. p. 8a) was not gold or silver bullion, nor was it gold or silver coin, but was in fact a number of pieces of engraved paper in the form of notes or promises to pay "in silver" or "in lawful money" upon demand. This paper currency is in its essence only an evidence of debt.

In *Blodgett* v. *Silberman*, 277 U. S. 1, 72 L. Ed. 749, 48 S. Ct. 410, relied on so heavily by Petitioner to support his refusal to pay that portion of the Virginia inheritance tax assessed against the currency in question, the argument was advanced that bonds of the United States payable to bearer and certificates of indebtedness of the United States took on the qualities of physical property and lost their character as choses in action. This Court struck down that argument and held that such items were at most choses in action and intangibles. 277 U. S. at pages 14 and 17.

In the *Blodgett* case, *supra*, the total amount of money involved was Two Hundred Eighty-seven and forty-seven

One Hundredths ($287.47) Dollars in "bank notes *and* coin" in a safe deposit box (italics supplied). This Court there held the money to be tangible property. In the instant case no coin is involved, all of the money in the safe deposit box being in currency. It is submitted that the currency in question in this case is more closely analogous for tax purposes to the bearer bonds issued by the United States declared to be intangible personal property in *Blodgett* v. *Silberman; supra*, than to the small amount of mixed coin and currency declared therein to be tangible property.

Respondent urges that *Pearson v. McGraw*, 308 U. S. 313, 84 L. Ed. 293, 60 S. Ct. 211, decided in 1939, expresses the better view and is dispositive of the questions presented by the Petitioner. In that case a resident and domiciliary of Oregon had directed an Illinois trust company to liquidate certain of his securities held by it under an agency agreement and to purchase, as his agent, Four Hundred Fifty Thousand ($450,000.00) Dollars of federal revenue notes and hold them for him. This the trust company did some six months before the death of its principal, the Oregon resident. A few days after the purchase of the notes, Mr. Hayes, the principal, executed a trust agreement, designating the Illinois trust company as trustee, and ordering it to transfer the federal reserve notes to the trust, which was for the benefit of certain designated relatives and which was irrevocable. From time to time thereafter, the trust company, as trustee, purchased bonds and other personal property for the account of the trust.

Upon the death of the principal-trustor in Oregon, that State assessed a succession or inheritance tax against the value of the federal reserve notes, on the ground that it had jurisdiction so to do under its statute similar in substance to the Virginia statute in the instant case. The majority of this Court, speaking through Mr. Justice Douglas, upheld the imposition of the tax on the ground that:

"* * * the various steps in the series must be considered as constituting but one integrated and indivisible transaction—a transfer by decedent of intangibles in contemplation of death." *Pearson* v. *McGraw*, 308 U. S. at page 317, 84 L. Ed. at page 296.

This Court went on to say that that being the case, it need not consider the nature of federal reserve notes. But Mr. Justice Stone wrote a concurring opinion and went directly to the question of whether Oregon could lay an inheritance or transfer tax on the value of federal reserve notes located in Illinois. He was of the opinion that the majority had chosen to avoid the principal direct question in the case, even though it reached the correct result.

Mr. Justice Stone's opinion concludes (308 U. S. at page 320, 84 L. Ed. at page 297):

"If the state has by its statute undertaken to lay a tax on gifts of bank notes outside the state without more—and we are without jurisdiction if it has not—no purpose is served by saying to the state that it could have reached the same result by another route, which, under its laws does not appear to be open to it.

"As I am of opinion that there is nothing in the Constitution to compel a state to treat federal reserve notes for tax purposes, as chattels were treated in Frick v. Pennsylvania, 268 U. S. 473, 69 L. Ed. 1058, 45 S. Ct. 603, 42 A. L. R. 316, and as no reason has been advanced, even in Blodgett v. Silberman, 277 U. S. 1, 18, 72 L. Ed. 749, 760, 48 S. Ct. 410, for a different view, cf. Baldwin v. Missouri, 281 U. S. 586, 591, 74 L. Ed. 1056, 1059, 60 S. Ct. 436, 72 A. L. R. 1303, the judgment should, I think, be reversed upon that ground rather than upon a theory of permissible legislation, of which apparently Oregon's tax laws do not avail.

"Mr. Justice Frankfurter agrees with my views as to Oregon's power to tax these federal reserve notes.

but is of opinion that the record sustains the ground taken in the Court's opinion."

Both of the principal cases cited in the petition and in the brief, *Blodgett* v. *Silberman*, *supra*, on the one hand and *Pearson* v. *McGraw*, *supra*, on the other, express and adhere to the general rule that the sovereign power of the state extends over intangibles of a domiciled resident even though, at the time a death transfer or succession tax is sought to be levied on such intangibles, they may be located in another state. The opinion of this Court in *Curry* v. *McCanless*, 307 U. S. 357, 83 L. Ed. 1339, 59 S. Ct. 900, 123 A. L. R. 162, points up the basic theory of "control over the person at the place of his domicile and his duty there."

CONCLUSION

In light of the foregoing, it is respectfully submitted that the judgment of the Circuit Court of Arlington County, Virginia, entered on June 29, 1959, is plainly right; that assessment and collection of the balance of inheritance tax due to the Commonwealth of Virginia does not deprive Petitioner of his property without due process of law in contravention of the Fourteenth Amendment; and that the writ of certiorari prayed for should be denied.

Respectfully submitted,

A. S. Harrison, Jr.
Attorney General

John W. Knowles
Assistant Attorney General

Supreme Court—State Library Building
Richmond 19, Virginia

March 13, 1960

CODE OF VIRGINIA, 1950 — SECTION 58-152

§ 58-152. Property subject to tax; to whom taxed; levy; gifts prima facie in contemplation of death.—State inheritance taxes as hereinafter prescribed are hereby levied upon the shares of the respective beneficiaries in all property within the jurisdiction of this Commonwealth, real, personal and mixed, and any interest therein, which shall pass:

(1) By will or by the laws regulating descents and distributions;

(2) By grant or gift made or intended to take effect in possession or enjoyment at or after the death of the grantor or donor;

(3) By grant or gift made in contemplation of death;

(4) By a transfer under which the transferrer has retained for his life the possession or enjoyment of the property or the income therefrom or the right to designate or change the beneficiaries who shall be entitled to possess or enjoy the property or the income therefrom;

(5) By virtue of the fact that it is held by the decedent and another as joint tenants or tenants by the entireties, with the right of survivorship, or is deposited with any person, firm or corporation doing a banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth; provided, that when such property or any part thereof or any part of the consideration with which such property was acquired is shown to have been at any time acquired by such other

person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person.

Every grant or gift made by the decedent within a period of three years ending with the date of his death shall be deemed prima facie to have been made in contemplation of death; but no such grant or gift made prior to such three-year period shall be deemed or held to have been made in contemplation of death.

CODE OF VIRGINIA, 1950 — SECTION 58-408

§ 58-408. Money.—(1) All money, except money which is otherwise taxed, on deposit with any bank or other corporation or firm or person doing banking business,

(2) Such part of the proceeds of any life insurance policy as is retained by the life insurance company on interest at the request of the owner of such policy or at the request of the beneficiary of such policy after the death of the insured,

(3) Partial payment deposits made with industrial loan associations for the purchase of income bonds, certificates of investment or investment bonds,

(4) Money in the possession or under the control of the owner, whether such money be actually in or out of this State and belonging to a resident of this State,

(5) All money under the control of a court receiver or commissioner in pursuance of an order, judgment or decree of any court, or in the hands or under the control of an executor, administrator, guardian, trustee, agent, or other fiduciary, and

(6) All money deposited to the credit of any suit, not in the hands of a receiver or other fiduciary,

Shall be deemed to be intangible personal property.

For the tax year beginning January first, nineteen hundred and forty-nine and for every tax year thereafter until otherwise provided by law, the taxes on net incomes shall be in lieu of a specific property tax on all money as defined by this section upon which a specific property tax of twenty cents per one hundred dollars of the actual value thereof was imposed by this section prior to the first day of January, nineteen hundred and forty-nine; but this paragraph shall not apply to the money of public service corporations which is taxed under other provisions of law, and nothing in this paragraph shall be construed as applying to any money which is includible in capital under §§ 58-410 to 58-412 and 58-418, or in merchants' capital under § 58-833.

This section shall be in force for the tax year nineteen hundred and forty-nine and every tax year thereafter.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. [redacted] 13

HARRY R. THOMAS, Executor of the Estate of Crandal Mackey, Deceased, *Petitioner*,

v.

COMMONWEALTH OF VIRGINIA, *Respondent*.

BRIEF FOR THE PETITIONER

CORNELIUS H. DOUGHERTY
1010 Vermont Avenue, N. W.
Washington, D. C.
Attorney for Petitioner

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 733

HARRY R. THOMAS, Executor of the Estate of Crandal Mackey, Deceased, *Petitioner*,

v.

COMMONWEALTH OF VIRGINIA, *Respondent*.

BRIEF FOR THE PETITIONER

OPINION BELOW

The memorandum opinion of the trial judge of the Circuit Court of Arlington County, Virginia, has not been officially reported but a copy of the opinion has been made a part of the record (R. 6).

JURISDICTION

The judgment of the Circuit Court of Arlington County, Virginia, became final upon the refusal of the Supreme Court of Appeals of the Commonwealth of

Virginia to grant a writ of error on the 27th day of November, 1959.

This Court has jurisdiction to review the judgment herein by writ of certiorari under 28 U.S.C.A., § 1257 (3).

The action of the respondent was in violation of Section 1 of the Fourteenth Amendment to the Constitution, the material part of which is as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The judgment of the Circuit Court of Arlington County, Virginia, is in conflict with the decision of this Court in *Blodgett* v. *Silberman*, 277 U.S. 1.

QUESTIONS PRESENTED

Was the Circuit Court of Arlington County, Virginia, in error in holding that the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, consisting of United States currency, commonly known as paper money, in a safe deposit box in the Second National Bank in the District of Columbia, in the name of the decedent at the time of his death, was intangible personal property and a proper subject of assessment for inheritance tax purposes by the State Tax Commission of Virginia.

Was the action of the State Taxing authority of the Commonwealth of Virginia, in assessing the Two Hundred Sixty-Three Thousand One Hundred

($263,100.00) Dollars, consisting of United States currency, commonly known as paper money, located in a safe deposit box in the Second National Bank in the District of Columbia, in the name of the decedent at the time of his death, as intangible personal property and subject to the payment of an inheritance tax in Virginia, supplemented by the judgment of the Circuit Court of Arlington County, Virginia, a taking of property without due process of law in violation of petitioner's rights under the Fourteenth Amendment?

STATEMENT OF CASE

Crandal Mackey, a member of the bar of this Court, of Virginia, and the District of Columbia, where he maintained his office until his last illness, died March 31, 1957, domiciled in Arlington County, State of Virginia, and letters testamentary were granted to Harry R. Thomas, as the Executor named in his will, by the Circuit Court of Arlington County, Virginia (R. 1).

Ancillary letters were also granted to Harry R. Thomas in the District of Columbia.

Among the assets of the estate was the sum of Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars in United States currency located in a safe deposit box in his name in the Second National Bank in Washington, D. C. (R. 2).

The taxing authority of the District of Columbia concluded that this cash was a tangible asset of the decedent's estate and included it in its assessment of inheritance tax due the District of Columbia, and your petitioner paid this tax (R. 2).

The State Tax Commission for Virginia declared that the Two Hundred Sixty-Three Thousand One

Hundred ($263,100.00) Dollars was an intangible asset of the estate and that it should be assessed as a part of the estate for inheritance tax purposes and assessed the entire tax at Twenty Thousand Three Hundred Seventy-Eight Dollars and Twenty-six Cents ($20,378.26). Your petitioner paid the sum of Thirteen Thousand Seven Hundred Ninety-Five Dollars and Thirty-three Cents ($13,795.33), the amount due excluding the tax on the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, leaving a balance of Sixty-Five Hundred Eighty-Two Dollars and Ninety-three Cents ($6,582.93) (R. 2).

An application for relief from such assessment, under the provisions of Title 58, Section 182 of the 1950 Code of Virginia, was filed in the Circuit Court of Arlington County, Virginia (R. 1). It contained, among other things, in paragraph 5-(c), the statement that the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars was tangible personal property not located within the State of Virginia and that it was not a proper subject of assessment for inheritance taxes by the State Tax Commission of Virginia, and that such assessment is in violation of the laws of the United States in that it is lacking in due process of law and denies to your petitioner the equal protection of law guaranteed to him by the Constitution (R. 2).

The matter was argued on bill and answer and your petitioner contended that on the basis of the decision of this Court in Blodgett v. Silberman, supra, that the cash in the District of Columbia was tangible personal property assessable in the District of Columbia and that any attempt by the taxing authority of the Commonwealth of Virginia to levy a tax on this property

would violate the due process clause of the Fourteenth Amendment.

On June 3, 1959, a memorandum was filed by William D. Medley, Judge, holding that the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, in currency in the safe deposit box in the Second National Bank in the District of Columbia at decedent's death, was intangible personal property and a proper subject of assessment for inheritance tax by the State Tax Commission of Virginia, and a judgment entered thereon against your petitioner in the sum of Sixty-Five Hundred Eighty-Two Dollars and Ninety-three Cents ($6,582.93), with interest at one per centum per month from June 30, 1958, until paid (R. 6-7).

A petition for the allowance of an appeal was timely filed in the Supreme Court of Appeals of Virginia at Richmond, in which it was asserted that any attempt to levy such a tax violated the due process clause of the Fourteenth Amendment.

The petition for the allowance of an appeal to the Circuit Court of Arlington County, Virginia, was denied on November 27, 1959 (R. 9).

ARGUMENT

The Decision in This Case, in Holding That the Cash Was Intangible Personal Property, is in Direct Conflict With a Decision of This Court

It was necessary that your petitioner file an inheritance tax return in the District of Columbia covering real estate and tangible personal property having its situs in the District of Columbia. The taxing authority of the District of Columbia concluded that the Two Hundred Sixty-Three Thousand One Hundred

($263,100.00) Dollars, in cash, in a safe deposit box in a bank in the District of Columbia at decedent's death was tangible personal property and as such was subject to its assessment for inheritance tax purposes.

The District based its decision that it was tangible personal property upon the statement contained in the opinion of this Court in the case of *Blodgett* v. *Silberman*, *supra*, at page 18, which is as follows:

> "There was a small amount of cash, $287.48, in bank notes and coin in a safe deposit box in New York which the Supreme Court of Errors held not taxable in Connecticut. As to this, the contention on behalf of Connecticut is that it should be treated as attached to the person of the owner and subject to a transfer tax at the domicil. It is argued that it was not like coin or treasure in bulk, but like loose change, so to speak. To money of this amount usually and easily carried on the person, it is said that the doctrine of mobilia sequuntur personam has peculiar application in the historical derivation of the maxim. But we think that money, so definitely fixed and separated in its actual situs from the person of the owner as this was, is tangible property and can not be distinguished from the paintings and furniture held in the Frick case to be taxable only in the jurisdiction where they were."

Your petitioner, in reliance upon this opinion, paid the tax so assessed in the District of Columbia.

Your petitioner further, on the basis of the opinion of this Court in the *Blodgett case*, opposed the imposition of a tax by the Tax Commission of the State of Virginia on the cash in the District of Columbia but the tax was assessed.

The Commonwealth, in its answer to petitioner's application for relief which was filed in the Circuit

Court of Arlington County, stated that it had correctly included the sum of Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, consisting of United States currency located in a safe deposit box in the Second National Bank of Washington, D. C., in the total assessment for Virginia inheritance tax purposes. It further states that it was intangible personal property, the situs of which for assessment of Virginia inheritance taxes was at the place of residence of the decedent owner at the time of his death (R. 4-5).

This Court can take judicial notice of the fact that a safe deposit box can only be opened by the owner of that box or someone authorized by him, with a key retained by him, together with the key held by the bank. In this way only could the United States currency be removed from the box. It could not be obtained in the same way as money which was deposited in the bank and had become co-mingled with the funds of others and which gave to the depositor the right to draw upon this account. The United States currency in the safe deposit box was something real and tangible and which could be controlled entirely by the owner of the box in the District of Columbia.

It is contended that your petitioner properly relied upon the decision of this Court in refusing to pay this tax and that the Circuit Court of Arlington County was in error in entering a judgment for the amount of the tax.

The Assessment of an Inheritance Tax by the State of Virginia, Supported by the Judgment of Its Court, on the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, in Cash, in the District of Columbia, Was a Taking of Property Without Due Process of Law and in Violation of Petitioner's Rights Under the Fourteenth Amendment

Your petitioner, in every way possible, raised the question that the assessment by Virginia of an inheritance tax on the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars was a taking of property without due process of law. The Circuit Court held that it was intangible personal property and properly taxable in Virginia. The Supreme Court of Appeals of Virginia denied an appeal with the statement that the order was plainly right.

If the decision of the Circuit Court is plainly right then the decision of this Court in *Blodgett* v. *Silberman, supra,* in stating that such cash was tangible personal property, and taxable at its situs, is plainly wrong.

In the case of *Frick, et al* v. *Pennsylvania,* 268 U.S. 473, is the following, at page 488 of the official reports:

> "The plaintiffs in error are the executors and an interested legatee. They contended in the state court, and contend here, that in so far as the Pennsylvania statute attempts to tax the transfer of tangible personal property having an actual situs in States other than Pennsylvania it transcends the power of that State, and thereby contravenes the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.
>
> "The precise question has not been presented to this Court before, but there are many decisions dealing with cognate questions which point the way to its solution. These decisions show, first,

that the exaction by a State of a tax which it is without power to impose is a taking of property without due process of law in violation of the Fourteenth Amendment; secondly, that while a State may so shape its tax laws as to reach every object which is under its jurisdiction it cannot give them any extra-territorial operation; and, thirdly, that as respects tangible personal property having an actual situs in a particular State, the power to subject it to state taxation rests exclusively in that State, regardless of the domicil of the owner."

Again, at page 491, this Court said:

"Other decisions show that the power to regulate the transmission, administration, and distribution of tangible personal property on the death of the owner rests with the State of its situs, and that the laws of other States have no bearing save as that State expressly or tacitly adopts them — their bearing then being attributable to such adoption and not to any force of their own."

Again, at page 492, this Court said:

"The jurisdiction possessed by the States of the situs was not partial but plenary, and included power to regulate the transfer both inter vivos and on the death of the owner, and power to tax both the property and the transfer."

Again, at page 493, this Court referred to the case of *Pullman's Car Company* v. *Pennsylvania*, 141 U.S. 18, 22, and said:

"'No general principles of law are better settled, or more fundamental, than that the legislative power of every State extends to all property within its borders, and that only so far as the comity of that State allows can such property be affected by the law of any other State. The old

rule expressed in the maxim mobilia sequuntur personam, by which personal property was regarded as subject to the law of the owner's domicil, grew up in the Middle Ages, when movable property consisted chiefly of gold and jewels, which could be easily carried by the owner from place to place, or secreted in spots known only to himself. In modern times, since the great increase in amount and variety of personal property, not immediately connected with the person of the owner, that rule has yielded more and more to the lex situs, the law of the place where the property is kept and used.' "

Finally, at page 496, this Court said:

"For the reasons which have been stated it must be held that the Pennsylvania statute, in so far as it attempts to tax the transfer of tangible personalty having an actual situs in other States, contravenes the due process of law clause of the Fourteenth Amendment and is invalid."

Your petitioner, in good faith, has paid the tax due the District of Columbia, the situs of the cash, upon the basis of the decision of this Court in the Blodgett case, that currency is tangible personal property, and it is not necessary to cite further decisions of this Court to support the theory that the assessment of the inheritance tax by the Virginia taxing authority and the judgment of the Circuit Court of Arlington County in the sum of Sixty-Five Hundred Eighty-Two Dollars and Ninety-three cents ($6,582.93), with interest at one per centum per month from June 30, 1958, until paid, upon the basis that the cash was intangible personal property and subject to the tax in Virginia, was the taking of property without due process of law and in violation of petitioner's rights under the Fourteenth Amendment.

United States Currency Is Tangible Personal Property

The respondent, in its opposition to the granting of the writ of certiorari, relied greatly upon the opinion of Mr. Justice Stone, in the case of *Pearson* v. *McGraw*, 308 U.S. 313, to support its theory that currency was intangible personal property. The opinion of Mr. Justice Stone was dicta and was in no way material to the decision of this Court. This Court, at page 318, said:

> "Therefore we need not consider the nature of federal reserve notes, for in that posture of the case their taxability as such and in isolation from the whole transaction is not in issue."

The decision of Mr. Justice Stone would place United States currency in the same category as a promissory note or a certificate of stock. If the note or certificate of stock was lost or destroyed it could be proved by other evidence. If United States currency is lost or destroyed the owner could not obtain a new certificate to replace it, indicating clearly that United States currency is physical property, the same as a piece of jewelry.

Bouvier's Law Dictionery describes tangible property as that which may be felt or touched, it must necessarily be corporeal, but it may be real or personal.

The respondent also, in its opposition, refers to the opinion of this Court in *Curry* v. *McCanless*, 307 U.S. 357. This Court in its opinion in that case, at page 363, said:

> "That rights in tangibles—land and chattels—are to be regarded in many respects as localized at the place where the tangible itself is located for

purposes of the jurisdiction of a court to make disposition of putative rights in them, for purposes of conflict of laws, and for purposes of taxation, is a doctrine generally accepted both in the common law and other legal systems before the adoption of the Fourteenth Amendment and since."

Again, at page 364, this Court said:

"The power of government and its agencies to possess and to exclude others from possessing tangibles, and thus to exclude them from enjoying rights in tangibles located within its territory, affords adequate basis for an exclusive taxing jurisdiction. When we speak of the jurisdiction to tax land or chattels as being exclusively in the state where they are physically located, we mean no more than that the benefit and protection of laws enabling the owner to enjoy the fruits of his ownership and the power to reach effectively the interests protected, for the purpose of subjecting them to payment of a tax, are so narrowly restricted to the state in whose territory the physical property is located as to set practical limits to taxation by others. Other states have been said to be without jurisdiction and so without constitutional power to tax tangibles if, because of their location elsewhere those states can afford no substantial protection to the rights taxed and cannot effectively lay hold of any interest in the property in order to compel payment of the tax."

This Court, in the case of *Nortz* v. *United States*, 294 U.S. 317, had occasion to go into the matter of gold certificates and in its opinion, at page 326, said:

"Gold certificates under this legislation were required to be issued in denominations of dollars, and called for the payment of dollars. These gold certificates were currency. They were not less so

> because the specified number of dollars were payable in gold coin, of the coinage of the United States. Being currency, and constituting legal tender, it is entirely inadmissible to regard the gold certificates as warehouse receipts. They were not contracts for a certain quantity of gold as a commodity. They called for dollars, not bullion."

The foregoing statement of this Court is clearly in accord with its decision in *Blodgett* v. *Silberman*, *supra*, in stating that currency was not to be placed in the category of being merely evidence of the right to obtain anything. It was legal tender and in and of itself was a tangible piece of property.

CONCLUSION

For the reasons stated herein, it is respectfully submitted that the judgment of the Circuit Court of Arlington County, Virginia, should be reversed and judgment entered in favor of the petitioner.

Respectfully submitted,

CORNELIUS H. DOHERTY
1010 Vermont Avenue, N. W.
Washington, D. C.

LAWRENCE W. DOUGLAS
404 Arlington Trust Building
Arlington, Virginia

HARRY LEE THOMAS
Court House Square
Arlington, Virginia

Attorneys for Petitioner

In the

Supreme Court of the United States

October Term, 1959

No. 733

HARRY R. THOMAS, EXECUTOR,
Petitioner

v.

COMMONWEALTH OF VIRGINIA,
Respondent

BRIEF ON BEHALF OF THE RESPONDENT

A. S. HARRISON, JR.
Attorney General of Virginia

R. D. MCILWAINE, III
Assistant Attorney General

Supreme Court–State Library Building
Richmond 19, Virginia

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HARRY R. THOMAS, EXECUTOR,
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BRIEF ON BEHALF OF THE RESPONDENT

PRELIMINARY STATEMENT

On November 20, 1958, pursuant to the provisions of Section 58-182 et seq. of the Code of Virginia (1950), the petitioner filed in the Circuit Court of Arlington County, Virginia, his application for relief from an allegedly erroneous inheritance tax assesment made by the Virginia Department of Taxation against the petitioner as executor of the estate of one Crandal Mackey. On June 29, 1959, the Circuit Court of Arlington County entered its order denying the application for relief and ordering the petitioner to pay the assessment in question. A petition for a writ of error to review this order of the Circuit Court of Arlington County was refused by the Supreme Court of Appeals of Virginia on November 27, 1959, and this Court granted certiorari on April 4, 1960.

STATEMENT OF FACTS

Crandal Mackey, a resident and domiciliary of Arlington County, Virginia, died testate in that county on March 31, 1957. His will was admitted to probate in the Circuit Court of Arlington County on April 9, 1957, and petitioner qualified as executor thereunder before the clerk of that court on the same day.

One of the assets of Mackey's estate was $263,100 in paper money of the United States, which was owned by Mackey and located at the time of his death in a safe deposit box registered to him in the Second National Bank in the District of Columbia. The Commonwealth of Virginia included this sum in Mackey's estate for inheritance tax purposes and assessed an inheritance tax upon its transfer by will. The District of Columbia also included this sum in its assessment of inheritance taxes upon Mackey's estate. Petitioner paid the tax imposed by the District of Columbia and instituted this action to obtain exoneration from the tax imposed by the Commonwealth of Virginia.

THE STATUTE

The inheritance tax under consideration in the case at bar was imposed by the Commonwealth of Virginia pursuant to the provisions of Section 58-152, Code of Virginia (1950) which, in pertinent part, provides:

> "State inheritance taxes as hereinafter prescribed are hereby levied upon the shares of the respective beneficiaries in all property within the jurisdiction of this Commonwealth, real, personal and mixed, and any interest therein, which shall pass:
>
> "(1) By will or by the laws regulating descents and distributions:
>
> * * *

As stated by the Supreme Court of Appeals in Virginia in *Commonwealth* v. *Morris*, 196 Va. 868, 877, 86 S. E. (2d) 135, the above quoted statute:

> "... lays the inheritance tax on the shares of beneficiaries of property 'within the jurisdiction of this Commonwealth.' Property may be in this jurisdiction either actually or constructively. It is here actually when it is physically present. It is here constructively when it is intangible personal property which has not acquired a tax situs elsewhere by reason of its use and its owner is domiciled here."

For tax purposes, money is declared to be intangible personal property by Section 58-408 of the Code of Virginia (1950) which, in pertinent part, prescribes:

* * *

> "(4) Money in the possession or under the control of the owner, whether such money be actually in or out of this State and belonging to a resident of this State.
>
> * * *
>
> "Shall be deemed to be intangible personal property."

* * *

QUESTION PRESENTED

Does the Fourteenth Amendment to the Constitution of the United States prohibit the State in which an individual is domiciled at the time of his death from imposing an inheritance tax upon the transfer, under decedent's will, of paper money of the United States belonging to decedent and kept by him in a safe deposit box located outside the State of his domicile?

ARGUMENT

I.

The Fourteenth Amendment to the Constitution of the United States Does Not Prohibit the Commonwealth of Virginia from Imposing an Inheritance Tax Upon the Transfer by Will of Paper Money of the United States Owned by a Domiciliary of Virginia and Kept by Him in a Safe Deposit Box in the District of Columbia.

In *Frick* v. *Pennsylvania*, 268 U. S. 473, this Court held that a State in which an individual is domiciled at the time of his death may not constitutionally tax the transfer of the decedent's tangible personal property which has an actual situs in other States. In that case, this Court declared a Pennsylvania statute to be in contravention of the "due process" clause of the Fourteenth Amendment and invalid to the extent that it attempted to tax the transfer of tangible personal property belonging to a citizen of Pennsylvania but having an actual situs in New York and Massachusetts. The tangible personal property under consideration in the *Frick* case consisted of *paintings, rugs, furniture, bronzes, procelains, household furnishings, tools, farm implements* and *automobiles*.

In *Blodgett* v. *Silberman*, 277 U. S. 1, this Court held that a State in which an individual is domiciled at the time of his death may constitutionally tax the transfer of decedent's intangible personal property even though the evidences of such property are located outside the taxing State at the time of death. The intangible personal property under consideration in the *Blodgett* case consisted of an interest in a partnership, certificates of stock, bonds and Treasury certificates of indebtedness of the United States, a bank account and a life insurance policy.

This Court's decision in the *Blodgett* case reversed that of the Supreme Court of Errors of Connecticut with respect to the nature and taxability of the bonds and

Treasury certificates of indebtedness there involved. The Supreme Court of Errors of Connecticut had ruled that such bonds and certificates of indebtedness "were to be regarded as in the same class of tangibles as the paintings, works of art and furniture considered" in the *Frick* case, and were thus not taxable by Connecticut since they had been kept by decedent in a safe deposit box in New York. *Blodgett v. Silberman, supra* at 6. In support of the view of the Supreme Court of Errors of Connecticut, this Court noted (277 U. S. at 13):

> "The argument is that such bonds payable to bearer and transferable from hand to hand have lost their character as choses in action and have taken on the qualities of physical property, and cases are cited to indicate that they can be made the subject of execution and constitute a basis for the jurisdiction of the courts and of taxing officers of the state in which the paper upon which the evidence of the debt or obligation is written is found, although their owner lives and dies in another state."

Rejecting this argument and the decision of the Supreme Court of Errors of Connecticut predicated upon it, this Court declared (277 U. S. at 14, 17):

> "The question here is whether bonds, unlike other choses in action, may have a situs different from the owner's domicile such as will render their transfer taxable in the state of that situs, and in only that state. ***We think bonds are not thus distinguishable from other choses in action.*** It is not enough to show that the written or printed evidence of ownership may, by the law of the state in which they are physically present, be permitted to be taken in execution or dealt with as reaching that of which they are evidence, even without the presence of the owner. While bonds often are so

treated, *they are nevertheless in their essence only evidences of debt.* (Italics supplied)

* * *

"The discussion in the Union Refrigerator Transit Co. Case shows what this court meant in the Frick Case in holding that personal property in the form of paintings and furniture having an actual situs in one state could not be subjected to a transfer tax in another state and emphasizes the inference that *it did not apply to anything having as its essence an indebtedness or a chose in action* and *could not apply to* property in the form of specialties or bonds or other *written evidences of indebtedness whether governmental or otherwise, even though they passed from hand to hand.* The analogy between furniture and bonds cannot be complete because bonds *are representative only* and *are not the thing represented. They are at most choses in action and intangibles.*

"We think therefore that the supreme court of errors in extending the rule of the Frick Case *from tangible personal property, like paintings, furniture or cattle, to bonds,* is not warranted, and to that extent we must reverse its conclusion in denying to Connecticut the right to tax the transfer of the bonds and Treasury certificates." (Italics supplied)

Having thus resolved the principal question presented in the *Blodgett* case, this Court—in the concluding paragraph of its opinion involving the reach of the Connecticut taxing statute—stated (277 U. S. at 18):

"There was a small amount of cash, $287.48, in bank notes and coin in a safe deposit box in New York which the supreme court of errors held not taxable in Connecticut. As to this, the contention on behalf of Connecticut is that it should be treated as attached to the person of the owner and subject to a transfer tax at the domicile. It is argued that it was not like coin or

> treasure in bulk, but like loose change, so to speak. To money of this amount usually and easily carried on the person, it is said that the doctrine of 'mobilia sequuntur personam' has peculiar application in the historical derivation of the maxim. But we think that money, so definitely fixed and separated in its actual situs from the person of the owner as this was, is tangible property and can not be distinguished from the paintings and furniture held in the Frick Case to be taxable only in the jurisdiction where they were."

The language of this Court quoted immediately above constitutes the sole support of the petitioner's position in the case at bar. Were it not for this language, the instant case would not have arisen. It would, therefore, seem appropriate to analyze this isolated paragraph in as much detail as its meager content will permit.

Initially, it should be noted that the total amount of money there involved was $287.48 comprised of bank notes *and coin*. The only reference to bank notes or paper money is that contained in the opening sentence of the paragraph. Thereafter, the Court noted Connecticut's contention that so small a sum of money was not like *coin* or *treasure* in bulk, but should more appropriately be considered similar to *loose change* usually and easily carried on the person. No consideration was given to the nature of the bank notes involved or to the essential character of paper money. In rejecting Connecticut's argument that the maxim *mobilia sequuntur personam* should apply with special emphasis to money of this amount, the Court merely stated that it thought that money "so definitely fixed and separated in its actual situs from the person of the owner as this was" could not be distinguished from such tangible personal property as paintings and furniture. As Mr. Justice Stone—who sat in the *Blodgett* case—was later to point out, this

statement of the Court was a completely reasonless observation.

What is paper money? The Court did not even purport to consider this question in *Blodgett*, and it remains to be considered here. The question is not a difficult one. Paper money is promissory notes of the United States Government. Indeed, paper money is called just that, i.e., bank *notes*, and was so called by this Court in the *Blodgett* case. Essentially, paper money is evidence of an obligation or promise on the part of the government of the United States to pay a sum certain to the bearer on demand.

At the present time, paper money is issued in the form of (1) Gold Certificates, issued only to Federal Reserve banks against credits with the Treasurer of the United States and not appearing in circulation; (2) Silver Certificates, issued by the Treasurer against any standard silver dollars, silver, or silver bullion held in the Treasury against which silver certificates are not already outstanding; (3) United States Notes and (4) Federal Reserve Notes. Silver Certificates and Federal Reserve Notes constitute the principal types of paper currency presently in circulation.

The inscription upon the face of a Silver Certificate recites:

> *"This certifies that there is on deposit in the Treasury of the United States of America ..... Dollars in silver payable to the bearer on demand."*

Similarly, the inscription upon the face of a Federal Reserve Note recites:

> *"The United States of America will pay to the bearer on demand ..... dollars.*

"This note is legal tender for all debts, public and private, and is redeemable in lawful money at the United States Treasury, or at any Federal Reserve Bank."

When the fundamental nature of paper money is considered, it is immediately apparent that this Court's observations concerning bonds and Treasury certificates of indebtedness in *Blodgett* are equally applicable to paper money. Silver certificates and Federal Reserve Notes—like bonds and Treasury certificates of indebtedness—are "in their essence only evidences of debt." Id. at 14. The rule of the *Frick* case cannot possibly apply to paper money because this Court flatly stated in *Blodgett* that the holding in the *Frick* case "could not apply to . . . written evidences of indebtedness whether governmental or otherwise, even though they passed from hand to hand." Id. at 17. Similarly—to paraphrase this Court's assertion concerning bonds—the "analogy between furniture and [paper money] cannot be complete because [bank notes] are representative only and are not the thing represented." Bank notes—like bonds and Treasury certificates of indebtedness—are "at most choses in action and intangibles." Id. at 17.

If, as stated by this Court in *Blodgett*, extension of the rule of the *Frick* case "from tangible personal property like paintings, furniture or cattle, to bonds, is not warranted," it is manifest that extension of the *Frick* rule to paper money is equally inappropriate. The validity of this proposition was clearly demonstrated in *Pearson* v. *McGraw*, 308 U. S. 313. In that case the decedent, a resident of Oregon, had placed various stocks, bonds and other intangibles in the possession of an Illinois trust company under an agency arrangement before moving to Oregon. Having established a domicile in the latter State, he directed the trust company to liquidate certain of his bonds and purchase $450,000

of federal reserve notes to be held for him by the trust company in Illinois. After these instructions had been carried out, decedent transferred the federal reserve notes to the trust company under an irrevocable trust agreement executed in Oregon for the benefit of certain designated relatives of the decedent. From time to time thereafter, the Illinois trust company used the federal reserve notes to purchase bonds and other personal property for the account of the trust.

Upon decedent's death in that State, Oregon imposed a tax upon the transfer of the federal reserve notes in question. The Supreme Court of Oregon "in reliance on *Blodgett* v. *Silberman*, 277 U. S. 1, 72 L. Ed. 749, 48 S. Ct. 410, concluded that the federal reserve notes were tangibles" and that Oregon was, therefore, constitutionally prohibited from imposing a tax on their transfer. *Pearson* v. *McGraw*, *supra* at 16. This Court disagreed with that conclusion and sustained the Oregon tax upon the ground that the various steps taken by the decedent constituted an integrated and indivisible transaction, i.e., a transfer by decedent of intangibles in contemplation of death. Having rested its decision upon this ground, the Court pointed out that it "need not consider the nature of federal reserve notes," for their taxability as such and in isolation from the whole transaction was not in issue. *Pearson* v. *McGraw*, *supra* at 318.

Believing it inappropriate to dispose of the constitutional question presented in the *Pearson* case upon the ground selected by the majority, Mr. Justice Stone—who had previously sat in the *Blodgett* case—authored a separate concurring opinion in which he stated (308 U. S. at 319):

> "I concur in the judgment of reversal on the ground that *nothing in the Constitution prevents taxation by by Oregon of a gift by its citizen of federal reserve notes located elsewhere.*

"While I do not question that in the circumstances of this case a state could, if so advised, constitutionally tax its citizen for action taken for no other purpose than the evasion of its taxing statutes, no such question is, I think, presented by the record. Discussion of it seems at most to be academic and not to relieve us of the duty of deciding the only federal question which could by any possibility be said to be raised by the record, namely, *whether the Constitution precludes taxation of the gift of the bank notes merely because of the physical fact that they are located without the state.*

* * * *

"*As I am of opinion that there is nothing in the Constitution to compel a state to treat federal reserve notes for tax purposes, as chattels were treated in Frick v. Pennsylvania*, 268 U. S. 473, 69 L. Ed. 1058, 45 S. Ct. 603, 42 A.L.R. 316, *and as no reason has been advanced, even in Blodgett v. Silberman*, 277 U. S. 1, 18, 72 L. Ed. 749, 760, 48 S. Ct. 410, *for a different view*, cf. Baldwin v. Missouri, 281 U. S. 586, 591, 74 L. Ed. 1056, 1059, 50 S. Ct. 436, 72 A.L.R. 1303, the judgment should, I think, be reversed upon that ground rather than upon a theory of permissible legislation, of which apparently Oregon's tax laws do not avail.

"*Mr. Justice Frankfurter agrees with my views as to Oregon's power to tax these federal reserve notes*, but is of opinion that the record sustains the ground taken in the Court's opinion." (Italics supplied)

Counsel for petitioner point out that Mr. Justice Stone's opinion was dicta and was not material to the decision in the *Pearson* case. Counsel for the Commonwealth concede the accuracy of these observations, for neither statement constitutes an argument nor does either detract in any way from the propriety of the view which Mr. Justice Stone expressed and in which Mr. Justice Frankfurter concurred.

Counsel for petitioner also point out that Mr. Justice Stone's decision would place United States currency in the same category as promissory notes and certificates of stock. Since United States currency *is* promissory notes, it is difficult to conceive of a more appropriate category in which it could be placed. The alternative to placing United States paper money in the same category as United States bonds and Treasury certificates of indebtedness is to place it in the same category as furniture, clothing, cattle and farm implements.

Of course, no real choice between these alternatives actually exists, for United States paper money is indisputably intangible. Reference to various federal statutes relating to the three types of paper money currently in circulation, i.e., Silver Certificates, United States Notes and Federal Reserve Notes, conclusively establishes the representative and evidentiary character of paper money. With respect to Silver Certificates, 31 U.S.C.A. 405a prescribes:

> "The Secretary of the Treasury is authorized and directed to issue silver certificates in such denominations as he may from time to time prescribe in a face amount not less than the cost of all silver purchased under the authority of section 734a of this title, and such certificates shall be placed in actual circulation. There shall be maintained in the Treasury *as security for all silver certificates at the time outstanding an amount of silver in bullion and standard silver dollars of a monetary value equal to the face amount of such silver certificates.* All silver certificates shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, *and shall be redeemable on demand at the Treasury of the United States in standard silver dollars;* and the Secretary of the Treasury is authorized *to coin standard silver dollars for such redemption.* (Italics supplied).

Moreover, with regard to United States Notes, 31 U.S.C.A. 401, 402 and 731, in pertinent part, respectively provide:

> "United States notes shall be of such denominations, not less than $1, as the Secretary of the Treasury may prescribe, *shall not bear interest, shall be payable to bearer*, and shall be in such form as the Secretary may deem best." (Italics supplied).
>
> * * *
>
> "The amount of United States notes outstanding and to be used as a part of the circulating medium, shall not exceed the sum of $300,000,000, *which said sum shall appear in each monthly statement of the public debt*, and no part thereof shall be held or used as a reserve." (Italics supplied).
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> * * *
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> "*The faith of the United States is solemnly pledged to the payment in coin or its equivalent of all the obligations of the United States not bearing interest, known as United States notes*, and of all the interest-bearing obligations of the United States, except in cases where the law authorizing the issue of any such obligations has expressly provided that the same may be paid in lawful money or other currency than gold and silver." (Italics supplied).

Finally, 12 U.S.C.A. 411 authorizes the issuance of Federal Reserve Notes and defines their character in the following language:

> "Federal reserve notes, to be issued at the discretion of the Board of Governors of the Federal Reserve System for the purpose of making advances to Federal reserve banks through the Federal reserve agents as hereinafter set forth and for no other purpose, are herby authorized. *The said notes shall be obligations of the United States* and shall be receivable by all na-

> tional and member banks and Federal reserve banks and for all taxes, customs, and other public dues. *They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve Bank.*" (Italics supplied).

So far as the principal question presented in the case at bar is concerned, the significance of the language italicized in the above quoted statutes cannot be too greatly emphasized and should not have to be labored. In light of this language, no one can deny that the certificates and notes constituting United States paper money are "in their essence only evidences of debt," are "representative only and are not the thing represented" and are "at most choses in action and intangibles." *Blodgett* v. *Silberman*, *supra*, at 14, 17. The validity of this conclusion is in no way affected by the manner in which paper money is stored or kept, or by the character of its repository. In this connection, counsel for petitioner request this Court to take judicial notice that a safe deposit box can only be opened by its owner, or someone authorized by him, with a key retained by the owner together with a key held by officials of the bank in which the safe deposit box is located. On this basis, counsel for petitioner assert that the United States currency in the case at bar could be controlled entirely by the owner of the box in the District of Columbia and was, therefore, "something real and tangible." Brief for the Petitioner, p. 7. Counsel for the Commonwealth submit that tangible personal property does not become intangible when it is placed in a safe deposit box, and it is certain that the intangible bonds and Treasury certificates of indebtedness under consideration in the *Blodgett* case did not become something real and tangible, even though they were kept in a safe deposit box located outside the taxing State.

In light of what has been said, it is unarguably manifest that the tax under consideration in the instant case was imposed—not upon gold bars, silver coins, jewels or other tangible property having a situs outside the Commonwealth of Virginia—but upon the transfer of a number of pieces of engraved paper having no intrinsic value, representing obligations of the United States and evidencing the indebtedness of the government of the United States to the bearer thereof. The transfer of such intangible property by will may clearly be taxed by the State in which the owner of the property was domiciled at the time of his death without infringing any provision of the Constitution of the United States. *Blodgett* v. *Silberman*, *supra*; *Baldwin* v. *Missouri*, 281 U. S. 586; *Curry* v. *McCanless*, 307 U. S. 357; cf., *Pearson* v. *McGraw*, *supra*.

CONCLUSION

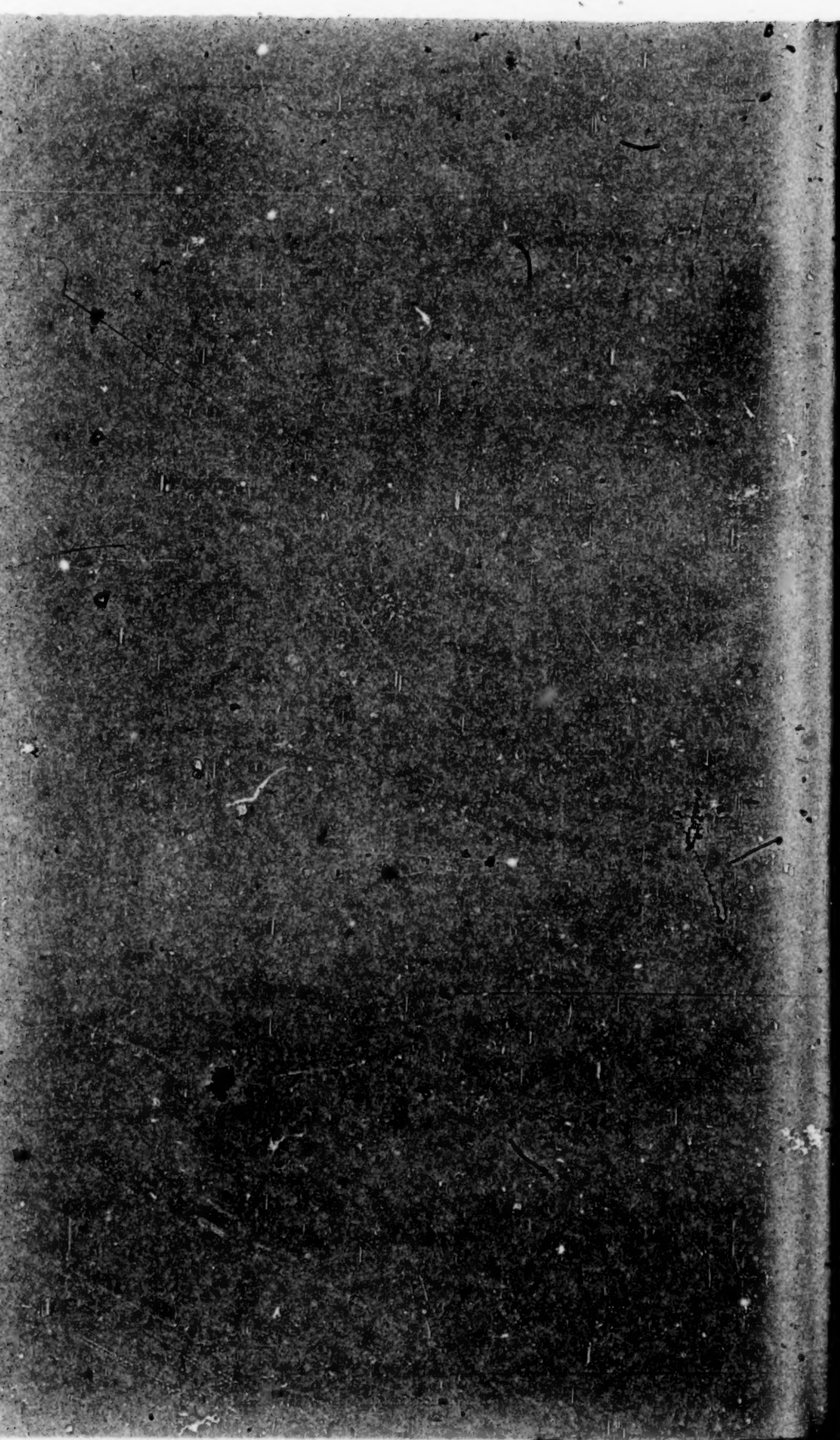
For the foregoing reasons, counsel for the Commonwealth respectfully submit that the Fourteenth Amendment to the Constitution of the United States does not prohibit the Commonwealth of Virginia from imposing the inheritance tax under consideration upon the transfer by will of paper money of the United States owned by a domiciliary of Virginia and kept by him in a safe deposit box in the District of Columbia.

Respectfully submitted.

A. S. HARRISON, JR.
Attorney General of Virginia

R. D. MCILWAINE, III
Assistant Attorney General

Supreme Court–State Library Building
Richmond 19, Virginia



§58-152. — State inheritance taxes as hereinafter prescribed are hereby levied upon the shares of the respective beneficiaries in all property within the jurisdiction of this Commonwealth, real, personal and mixed, and any interest therein, which shall pass:

(1) By will or by the laws regulating descents and distributions;

(2) By grant or gift made or intended to take effect in possession or enjoyment at or after the death of the grantor or donor;

(3) By grant or gift made in contemplation of death;

(4) By a transfer under which the transferrer has retained for his life the possession or enjoyment of the property or the income therefrom or the right to designate or change the beneficiaries who shall be entitled to possess or enjoy the property or the income therefrom;

(5) By virtue of the fact that it is held by the decedent and another as joint tenants or tenants by the entireties, with the right of survivorship, or is deposited with any person, firm or corporation doing a banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth; provided, that when such property or any part thereof or any part of the consideration with which such property was acquired is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value

of such property as is proportionate to the consideration furnished by such other person.

Every grant or gift made by the decedent within a period of three years ending with the date of his death shall be deemed prima facie to have been made in contemplation of death; but no such grant or gift made prior to such three-year period shall be deemed or held to have been made in contemplation of death.

§ 58-408.—(1) All money, except money which is otherwise taxed, on deposit with any bank or other corporation or firm or person doing a banking business,

(2) Such part of the proceeds of any life insurance policy as is retained by the life insurance company on interest at the request of the owner of such policy or at the request of the beneficiary of such policy after the death of the insured,

(3) Partial payment deposits made with industrial loan associations for the purchase of income bonds, certificates of investment or investment bonds,

(4) Money in the possession or under the control of the owner, whether such money be actually in or out of this State and belonging to a resident of this State,

(5) All money under the control of a court receiver or commissioner in pursuance of an order, judgment or decree of any court, or in the hands or under the control of an executor, administrator, guardian, trustee, agent, or other fiduciary, and

(6) All money deposited to the credit of any suit, not in the hands of a receiver or other fiduciary,

Shall be deemed to be intangible personal property.

For the tax year beginning January first, nineteen hundred and forty-nine and for every tax year thereafter until otherwise provided by law, the taxes on net incomes shall be in lieu of a specific property tax on all money as defined by this section upon which a specific property tax of twenty cents per one hundred dollars of the actual value thereof was imposed by this section prior to the first day of January, nineteen hundred and forty-nine; but this paragraph shall not apply to the money of public service corporations which is taxed under other provisions of law, and nothing in this paragraph shall be construed as applying to any money which is includible in capital under §§ 58-410 to 58-412 and 58-418, or in merchants' capital under §58-833.

This section shall be in force for the tax year nineteen hundred and forty-nine and every tax year thereafter.

SUPREME COURT OF THE UNITED STATES

No. 43.—October Term, 1960.

Harry R. Thomas, Petitioner, v. Virginia, Respondent.	On Writ of Certiorari to the Circuit Court of Arlington County of the Commonwealth of Virginia.

[November 21, 1960.]

Per Curiam.

The judgment of the Circuit Court of Arlington County of the Commonwealth of Virginia is reversed and the case is remanded to that court. *Blodgett* v. *Silberman*, 277 U. S. 1, 18.

Mr. Justice Black dissents for the same reason expressed by Mr. Justice Holmes in *Union Transit Co.* v. *Kentucky*, 199 U. S. 194, 211:

> "It seems to me that the result reached by the Court probably is a desirable one, but I hardly understand how it can be deduced from the Fourteenth Amendment . . . ."